Franchise District" which encompasses the core Seattle area.[20] In contrast, the City of Seattle states that Comcast "is the City's largest cable operator serving approximately 170,000 Seattle subscribers with cable television, telephony and high-speed internet service," a number which excludes Comcast subscribers in other areas of the Seattle MSA beyond those within the Seattle city limits.

15. In view of Comcast's status as the predominant cable-based telecommunications competitor in the Seattle MSA, the bulk of the discussion in this section is focused on Comcast's efforts in this arena. However, Millennium is also competing with Qwest in offering the "triple play" of cable television, broadband internet and digital telephone services. In particular, Millennium offers to residential customers in the core Seattle area "Millennium CableSpeed" internet service at prices ranging from $18.60 to $54.95 (depending on speed and package options) and "Millennium Voice Phone Service"--an internet-based telephone service--at prices ranging from $19.99 to $39.99 (depending on package options).[21] Millennium also provides broadband internet services, entitled "CableSpeed Pro"[22] to business customers, enabling businesses in the core Seattle area, via a Millennium broadband internet connection, to utilize VoIP telephone services available from a range of providers discussed in this declaration. For residential and business customers alike in the core Seattle area, Millennium's products represent

[20] http://www.seattle.gov/cable/franchises.htm. See Exhibit 1, Page 4.

[21] http://www.mdm.net/rates/seattle.pdf. Exhibit 1, Page 5.

[22] http://www.mdmbusiness.com/cablespeed.php. Exhibit 1, Page 6.

another form of telecommunications competition which is not dependent upon Qwest's wholesale services.

16. In discussing Comcast's highly successful competitive efforts in the Seattle MSA, it is useful to first discuss the scope and nature of Comcast's successes in Washington in general. Comcast's network directly passes at least 1.6 million homes in Washington, and Comcast now provides at least one of its services (e.g.: cable television, cable modem service or telephone service) to 1.1 million subscribers (69% of its potential customer base).[23] Comcast has provided public information that gives some insights into its current and targeted penetration rates for telephone service in the state. Comcast now has approximately 98,000 Spokane-area customers, and according to Len Rozek, a Comcast Senior Vice President, Comcast "expects to get about 36,000 customers for its telephone service."[24] In other words, Comcast's target penetration rate for telephone service in its Spokane market is approximately 38% of those customers already subscribing to Comcast cable television service. If Comcast is successful in achieving that same penetration rate in its existing Comcast cable television subscriber base throughout its service footprint in the Seattle market, which alone has approximately 1 million subscribers of basic Comcast video service,[25] that penetration would translate to approximately 380,000 Comcast telephone service customers in the Seattle MSA, a very

[23] Seattle Times, 9/23/05. See Exhibit 1, Page 7.

[24] Comcast Telephone Service Draws Interest, Spokesman Review, 3/24/06. See Exhibit 1, Page 9.

[25] http://seattle.comcastspotlight.com/sites/Default.aspx?pageid=11273&siteid=110&subnav=2. See Exhibit 1, Page 11.

significant number by any measure.[26] Additionally, these customers are served entirely via Comcast-owned network facilities and Comcast does not rely on Qwest wholesale network elements in the provision of its telephone services.

17. With the exception of the core Seattle area served by Millennium Digital Media, Comcast is the primary cable television provider in King County, which overlays the entire geographic area of the Seattle MSA. While specific details of its current network map are proprietary to Comcast, other useful information is provided in the Comcast website that can be used to approximate Comcast's Seattle MSA market coverage. In its website, Comcast reports its media coverage area in the Seattle DMA for use in displaying the geographic reach of its coaxial and fiber network to potential advertisers interested in using the Comcast network to distribute advertising. This map clearly shows that Comcast's DMA coverage area encompasses virtually the entire Seattle MSA, excluding the area served by Millennium.[27] In fact, according to this Comcast media coverage map (and excluding Seattle wire centers served by Millennium), the Comcast network serves Qwest wire centers in the Seattle MSA which contain over [redacted] of

[26] Comcast has not publicly divulged the number of digital telephone subscribers it currently has in the Seattle MSA. However, Comcast reported in a March 1, 2007 press release that it had 24.2 million video subscribers and 2.5 million voice subscribers nationally at that time (see Exhibit 1, Page 13), translating to a digital telephone penetration rate of approximately 10.3%. If that ratio holds true for Comcast's Seattle market, Comcast would currently have at least 103,000 digital telephone subscribers in that market (e.g.: 1,000,000 X .103 = 103,000), a number that is rapidly increasing.

[27] See Exhibit 1, Page 1. The term "DMA" represents the phrase "Designated Market Area," and is commonly used in the media industry to define geographic coverage areas for advertising. The DMA map in Exhibit 1 is included in this declaration as a reasonable approximation of Comcast's network facilities footprint, since Comcast offers this map on its public website to potential advertisers as a representation of the geographic reach advertisers can expect when using the Comcast network to distribute advertising in King County within the Seattle DMA.

Qwest's residential lines and over [redacted] of Qwest's switched business lines in the MSA.[28]

18. Recently, Comcast senior leadership expressed highly optimistic prospects for growth in its digital voice telephone operations over the next three years, which currently has a nationwide subscriber base of 2.1 million subscribers.[29] John Alchin, co-Chief Financial Officer for Comcast stated:

> "In that time frame, it is entirely conceivable and even probable that we could add 10 million phone customers."[30]

In other words, Comcast's view is that its telephone subscriber base will grow by nearly 400% between 2007 and 2010. Comcast is actively ramping up its infrastructure in Washington to prepare for this growth. On August 8, 2006, Comcast announced that it will lease a new office building in Lynnwood that will house more than 500 customer service representatives, which will bring the total number of Comcast service representatives in the state to nearly 1,000.[31]

At a national level, Comcast's success with its Digital Voice product has clearly exceeded the company's earlier projections. In September 2006, Comcast reported that it

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[28] Source: Qwest Forecast Data Mart data as of December 2006. When wire centers served by Millennium are included in this calculation, virtually 100% of Qwest's residential and business access lines in the Seattle MSA are in wire centers served either by Comcast or Millennium.

[29] http://www.marketwatch.com/news/story/comcast-confident-cable-phone-war/story.aspx?guid={F8C09A0C-9A88-4057-AD62-3917AB81D79F}. It should be noted that Comcast's telephone subscriber base consists of customers of Comcast's Digital Phone service, which is a circuit-switched digital telephone service no longer available to new subscribers, and Comcast Digital Voice service, which is a VoIP-based telephone service now being actively marketed by Comcast. See Exhibit 1, Page 15.

[30] *Id.*

[31] http://www.cabletv.com/comast-cable/411-comcast-open-new-customer-service.html. See Exhibit 1, Page 17.

was expecting to add 1.3 million to 1.4 million digital phone customers nationally for the year versus the 1 million additions it had previously estimated.[32] After an exceptional fourth quarter that included the addition of 508,000 CDV customers, however, Comcast in reality added over *1.5 million* digital phone customers for the year.[33] In describing Comcast's 2006 performance, Chairman and CEO Brian Roberts proclaimed:

> "2006 was simply our best year ever. Powered by our triple play offering and superior products, we added more RGUs [i.e., revenue-generating units] than at any other time in our history and reported terrific growth in cable revenue and Operating Cash Flow. This record-setting performance demonstrates substantial operating momentum, and we could not be more enthusiastic about the future."[34]

Given the doubling in the number of Comcast service representatives in the state to accommodate increased customer demand for its services and Comcast's aggressive promotional efforts of its three product bundle in the Seattle MSA, it is clear that Comcast Digital Voice is contributing directly to Comcast's terrific growth in this market area.

19. Comcast currently offers its "Digital Voice" service, which is provided via VoIP technology,[35] to residential customers served via the Comcast network at a standard price of $39.95 for customers already subscribing to Comcast cable television and high speed internet service. For customers with either Comcast cable television service or high

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[32] http://www.multichannel.com/article/CA6374497.html. See Exhibit 1, Page 19.

[33] *Comcast Reports 2006 Results and Outlook for 2007, Announces 3-for-2 Stock Split*, Press Release issued February, 1, 2007, Table 6. See Exhibit 1, Page 23.

[34] *Id.* See Exhibit 1, Page 23.

[35] While Comcast uses VoIP technology in providing telephone services, Comcast requires its digital telephone subscribers to use Comcast's coaxial loop network. Comcast's telephone service is not offered to any subscriber that subscribes to broadband service from a provider other than Comcast.

speed internet service, Comcast prices its digital voice service at $44.95 per month. If the customer wishes to subscribe only to Comcast digital voice service, Comcast's monthly rate for the service is $54.95.[36] Included with its digital voice service are unlimited local and long distance calling (including free long distance calls to Canada) plus 12 standard calling features.[37]

20. Comcast has aggressively offered discounted pricing for its digital voice telephone service to attract new customers. For example, it recently offered a promotional price of $24.99 per month until 2007 for its Comcast Digital Voice service, a discount of $15.00 from its standard price (and as discussed earlier in our declaration, offered a limited time promotion of $19.99 for this service to potential customers in the Seattle MSA). Comcast's digital voice service has been targeted primarily to residential customers thus far. However, on August 7, 2006, Comcast announced the appointment of Mr. William Stemper as president of Comcast Business Services. In announcing Mr. Stemper's appointment, Dave Watson, Executive Vice President of Operations for Comcast stated:

> I'm thrilled that he will lead Comcast's continued efforts as we leverage our unparalleled network to deliver video, voice and data services for the business marketplace.[38]

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[36] In March 2007, Comcast conducted a promotional offer of its stand-alone Digital Voice service for $19.99 per month for six months. See Exhibit 1, Page 38.

[37] See Exhibit 1, Page 40.

[38] http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=892959&highlight=/. See Exhibit 1, Page 42.

Clearly, Comcast now has leadership in place that is focused on leveraging its network investments to deliver voice services that compete directly with Qwest's retail mass markets and enterprise business telecommunications services. Additionally, on March 21, 2007, Comcast announced the opening of a call center in Centennial, Colorado (one of two such facilities nationwide established to process service orders for small business customers anywhere in the country) that is dedicated specifically to serving the small business market.[39] In discussing Comcast's focus on the business market, Jim Erickson, Comcast's vice president of business services for Comcast's western U.S. division, stated: "the companies that serve the small-to-medium business market have taken them for granted, and these people are looking for a choice."[40] Clearly, Comcast is positioning itself in the market as representing a provider of business communications services that are direct substitutes for such services offered by Qwest.

21. Finally, Comcast has taken action to address its lack of a wireless offering in its service bundle by entering into an agreement with Sprint/Nextel to resell Sprint wireless service to Comcast subscribers, similar to an earlier agreement between Qwest and Sprint.[41] This arrangement allows Comcast to fill a gap in its product portfolio, and will enable Comcast to offer the "quadruple play" bundle of services to customers, consisting of video, broadband internet access, digital telephone and wireless service. Since customers clearly prefer one-stop shopping in their communications services, this

[39] http://www.rockymountainnews.com/drmn/cda/article_print/0,1983,DRMN_23910_5431464_ARTICLE-DETAIL-PRINT,00.html. See Exhibit 1, Page 43.

[40] *Id.*

[41] http://news.com.com/2100-1039_3-6147061.html. See Exhibit 1, Page 44.

arrangement is a tool for Comcast to drive up penetration rates for all services in the bundle.

Comcast sees mobility as a way to add more convenience and value to its customer base. In an article on C/Net, Tom Nagel, senior vice president and general manager for wireless at Comcast, stated "There is no question that wireless ties all of our services together. The idea is you can take the services you enjoy at home with you when you're on the go using a mobile device."[42] According to this article, Comcast's initial launch "will allow customers to access their e-mail, cable TV guide and home voice mail from their cell phones. They'll offer some video content on their phones that would otherwise be available only at home. Eventually, the cable companies want to allow customers to be able to do things like program their DVRs remotely from their handsets."[43]

22. Independent industry analysts identify ILEC access line losses to cable telephony providers as significant and continuing. For example, Fitch Ratings states:

> "The competitive impacts of technological change remained intense, as expected, in 2006 and this should continue in 2007. Cable multiple system operators (MSOs) have aggressively rolled out digital telephony services using voice over Internet protocol (VoIP) technology that has increased retail access line erosion of incumbent local exchange carriers (ILECs). The scale of this erosion, which is expected to reach a total of approximately 6 million, representing cable telephony net additions in 2006 of more than 3 million, has increased with the widespread availability of cable telephony and its associated multi-service bundles."[44]

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[42] *Id.*

[43] *Id.*

[44] Regulatory Event Risk Headlines Fitch's U.S. Telecom Outlook for 2007, November 29, 2006. See Exhibit 1, Page 46.

Like the majority of cable MSOs, Comcast has deployed VoIP technology to support continued growth in its digital telephone market segment. Industry analyst Light Reading states:

> "North American cable operators are now signing up an average of about 11,000 new customers a day for IP phone service, up from 9,900 customers per day in the first quarter. Although impressive, that's not too surprising given that all three of the biggest cable IP phone players - Time Warner Cable, Cablevision Systems and Comcast - are now signing up close to 10,000 or more subscribers every week."[45]

Clearly cable service providers such as Comcast are focused on expanding the base of subscribers for cable-based telephone services as these providers seek to improve their revenue streams by driving up the number of customers purchasing multiple services in addition to basic cable television service.

[45] http://www.lightreading.com/document.asp?doc_id=108862&print=true. See Exhibit 1, Page 54.

III. CLECs

23. In addition to Comcast, over [redacted] unaffiliated CLECs are currently offering telephone services in competition with Qwest in the Seattle MSA. Of these CLECs, as of December 2006, [redacted] CLECs were providing services to customers via their own non-Qwest network facilities, [redacted] were providing service utilizing UNE Loops, [redacted] were providing service using the Qwest Platform Plus[46] ("QPP") finished wholesale service and [redacted] were reselling Qwest retail services.[47] It is important to note that CLECs utilizing non-Qwest network facilities, QPP/QLSP and/or resale *are not reliant upon Qwest UNEs* to provide service to their customers.

24. CLECs are utilizing Qwest wholesale services to compete with Qwest in every wire center in the Seattle MSA. Highly Confidential Exhibit 2 shows the distribution of Qwest wholesale services purchased by CLECs as of December 2006 in each wire center, segmented by residential and business line categories. Since Qwest has no means of determining the type of retail service for which CLECs are utilizing standalone UNE-L and Enhanced Extended Loop ("EEL") services, and it has been Qwest's experience that those CLECs relying on Qwest's network have typically utilized resale, UNE-Platform or QPP to serve their residential customers, these wholesale services are attributed to the "business" category in this summary. It is important to note that the information shown

[46] Qwest Local Services Platform ("QLSP") is the Qwest wholesale service which replaces the QPP service as Qwest/CLEC QPP commercial agreements expire, and since no CLECs in Washington were utilizing QLSP to serve customers until January 2007, there are no QLSP line counts in Qwest's December 2006 wholesale tracking data.

[47] Qwest wholesale tracking systems, December 2006.

in Highly Confidential Exhibit 2 excludes any data associated with access lines served via: 1) CLEC-owned network facilities, 2) Special Access service purchased from Qwest, or 3) network facilities leased from non-Qwest providers, and therefore represents only a subset of CLEC lines in service in the Seattle MSA.

25. To the extent CLECs are utilizing their own networks to serve residential and business customers in the Seattle MSA, Qwest has no means to obtain precise in-service access line counts for these CLECs. However, Qwest does track the number of white pages listings, by rate center, for CLECs that are "facilities-based" (those utilizing CLEC-owned switches and loops, such as Comcast, and/or CLEC-owned switches and unbundled loops or Special Access services purchased from Qwest), and Qwest can use this information to develop a conservative estimate of the number of lines served by such CLECs.[48] Based upon white pages listings data as of January 2007, which understate CLEC access lines to the extent CLEC customers do not always request their listings to appear in the white pages database, there were approximately [redacted] business lines and [redacted] residential lines associated with facilities-based CLECs in the Seattle MSA rate centers. Following is a brief overview of several CLECs now serving the Seattle MSA, with particular emphasis on those CLECs utilizing non-Qwest network facilities.

[48] About 75% of Qwest's residential lines and 36% of its business lines are listed in the white pages directories. Qwest assumes the CLECs' customer bases will have similar listings per line ratios, and estimates facilities-based CLEC lines on this basis [redacted]. Note that business customers often elect to list only their primary telephone number in the white pages directory, so that there are significantly more business lines than business white pages listings. To the extent customers of facilities-based CLECs do not request that their telephone numbers be included in the Qwest white pages listings database, these telephone numbers are not reflected in the facilities-based CLEC customer white pages listings at all.

26. AT&T, the largest telecom company in the U.S., offers a wide range of telecommunications services to all classes of residential, small business and enterprise business customers in the Seattle MSA. The company's website indicates it provides solutions designed to meet all personal communications needs (at home and on the go) as well as the needs of small, medium, large and global businesses and governmental entities. AT&T also offers wholesale and wireless services.[49] Additionally, AT&T has expanded its product reach by offering its CallVantage VoIP service--which bypasses Qwest's switched voice network--to any customer in the Seattle MSA with a broadband internet connection.[50] According to GeoTel, AT&T has approximately [redacted] route miles of fiber within the Seattle MSA that may be used to provide a wide range of voice and data services to customers without relying on the purchase of Qwest wholesale services.[51]

27. Eschelon is a major facilities-based CLEC providing services to small and enterprise business customers in a number of markets in the western U.S., including the Seattle MSA.[52] In describing its operations, Eschelon states:

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[49] http://att.sbc.com/gen/landing-pages?pid=3308. See Exhibit 3, Page 1.

[50] http://www.consumer.att.com/. See Exhibit 3, Page 2.

[51] GeoTel fiber route data, October 2006.

[52] On March 20, 2007, Integra Telecom, Inc. announced that it has entered into an agreement to purchase Eschelon, dependent upon governmental and shareholder approvals expected in the third quarter of 2007. At that time, Integra estimates that the combined Integra/Eschelon revenues will be approximately $700 million annually and the combined companies will "serve an average of 20 percent of the businesses in the metropolitan areas in which they operate," which includes the Seattle MSA. While this transaction appears to be in progress, these two entities are treated in this declaration as unaffiliated carriers for purposes of the discussion of CLEC presence in the Seattle MSA. http://www.integratelecom.com/about/news/news_releases/2007/2007-03-20_news_release.asp. See Exhibit 3, Page 3.

> Eschelon Telecom, Inc. is a facilities-based competitive communications services provider of voice and data services and business telephone systems in 45 markets in the western United States. The company serves over 60,000 business customers and has in excess of 550,000 access lines in service throughout its markets in Washington, California, Colorado, Minnesota, Montana, Nevada, Oregon, Utah and Washington.[53]

Eschelon offers a broad range of voice and data services to small and enterprise business customers, including local exchange service, digital T-1 services, digital PBX trunks, long distance service, integrated voice/data services and a wide range of features.[54] Additionally, in late 2005, Eschelon introduced its "Precision FlexPak" VoIP service, which is provided over its own managed network. By June 2006, Eschelon reported that its Precision FlexPak service was exceeding sales expectations and represented 37 percent of the company's total lines sold.[55] In November 2006, Eschelon announced that its percentage of backhaul facilities carried over company-owned fiber had reached 52 percent, and predicted that this percentage would continue to grow as the company initiated the next phase of its network expansion.[56]

28. Like Eschelon, Integra is a facilities-based CLEC providing a range of services to small and enterprise business customers, including basic business voice lines, long distance services, T-1 services, voice/data integrated services, features, private line services, internet access, etc.[57] In describing itself, Integra states:

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[53] www.eschelon.com/about_us/. See Exhibit 3, Page 5.

[54] http://www.eschelon.com. See Exhibit 3, Page 7.

[55] http://www.eschelon.com/about_us/section_detail.aspx?itemID=7588&catID=6885&SelectCatID=6885. See Exhibit 3, Page 9.

[56] http://www.eschelon.com/about_us/section_detail.aspx?itemID=8311&catID=220&SelectCatID=220. See Exhibit 3, Page 11.

[57] http://www.integratelecom.com/products/. See Exhibit 3, Page 13.

> "Integra Telecom, Inc. is a facilities-based, integrated communications carrier, dedicated to providing a better choice for businesses in eight western states. It owns and operates a best-in-class carrier network...the company serves nearly 400,000 lines in the metropolitan areas of Arizona, California, Idaho, Minnesota, North Dakota, Oregon, Utah and Washington. In contrast to companies that simply resell services from the monopoly Regional Bell Operating Companies (RBOC), Integra owns and operates its own network offering local dial tone, domestic and international long distance, high speed Internet and data services (including digital subscriber line or DSL), voice messaging, and numerous ancillary services designed to support the communications needs of businesses."[58]

On August 1, 2006, Integra acquired Electric Lightwave, which is a fiber-based carrier serving 23 metropolitan areas in eight western states (including Washington and the Seattle MSA).[59] In discussing its acquisition of Electric Lightwave, Integra stated:

> "Through its acquisition of Electric Lightwave in 2006, Integra owns and operates an eight-market, 2,200 route mile (160,000 fiber miles) metropolitan area network, with direct fiber access into over 580 major commercial buildings. Many other competitive local exchange carriers are scrambling to find network alternatives in response to recent FCC rules that increase the cost of leasing network from the Bell companies. Integra, by acquiring Electric Lightwave's metropolitan area network, becomes one of the first to insulate itself from this unpredictable landscape of telecom regulation."[60]

The current Integra website contains a map showing the extent of the Integra/Electric Lightwave network, and clearly shows the route of their current fiber network ring in the Seattle MSA, a fiber ring which is now available as an alternative to Qwest's loop and transport network.[61] According to GeoTel competitive fiber tracking data, Integra/ELI now owns approximately [redacted] miles of fiber within Qwest wire center boundaries

[58] http://www.integratelecom.com/about/. See Exhibit 3, Page 14.

[59] http://www.electriclightwave.com. See Exhibit 3, Page 15.

[60] http://www.integratelecom.com/about/network_and_facilities.asp. See Exhibit 3, Page 16.

[61] http://www.electriclightwave.com/maps/LonghaulNetwork.pdf. See Exhibit 3, Page 18.

in the Seattle MSA for use in providing services, without relying on Qwest wholesale services, to small and enterprise business customers in that MSA. Interestingly, on September 26, 2006, Integra announced the results of business "market share" research conducted for Integra by Riley Research Associates during July and August 2006 in seven MSAs, including the Seattle MSA. The results of this research (which do not appear to account for the presence of intermodal competition) show Qwest with a 45% share of the business market, the combination of Comcast, Eschelon, AT&T, McLeod, Integra (prior to the ELI acquisition), Verizon and Sprint with a 43% share, and all other CLECs with an 12% share of the business market.[62] While not dispositive, Integra's own data shows a significant level of competition exists in the business telecom market in the Seattle MSA, and that Integra is well positioned with its acquisition of facilities-based Electric Lightwave to make even greater inroads into the small business and enterprise business markets in the area.

29. On October 17, 2006, Level 3 announced its acquisition of Broadwing Corporation, a CLEC serving small and enterprise business customers in a variety of U.S. markets, including the Seattle MSA. Until this acquisition, Level 3 was primarily a major "carriers' carrier," offering wholesale telecom services to other communications providers. However, in discussing its Broadwing acquisition, Level 3 stated:

> "The acquisition of Broadwing is consistent with both the Level 3 wholesale market strategy as well as our more recent entry into the enterprise market. We believe the combination of Level 3 and Broadwing will create value for our investors through the elimination of duplicative

[62] http://www.integratelecom.com/about/news/news_releases/2006/2006-09-26_news_release.asp. See Exhibit 3, Page 19.

> network and operating costs, the addition of a solid revenue base, and a further strengthening of our financial position. Broadwing has made great strides with national enterprise customers as a result of their strong product portfolio and national sales teams. This creates an exciting opportunity for us to leverage both of these capabilities to accelerate the growth of Level 3's Business Markets Group."[63]

Level 3 announced the completion of this acquisition in early January 2007. As is the case with other CLECs serving the Seattle MSA, it is noteworthy that Level 3 has established a specific marketing organization, the Level 3 Business Markets Group, to focus specifically on serving the small and enterprise business markets--a strategy that has been enhanced through Level 3's acquisition of Broadwing. Level 3 has also partnered with Covad to deliver VoIP telecom services to the small and medium business market.[64] This Covad-branded service is now available to any Seattle MSA customer with a broadband internet connection as a direct substitute for Qwest's retail voice services. With its acquisition of Broadwing, Level 3 now owns and operates a 39,500 mile fiber network,[65] including over [redacted] fiber miles in Qwest wire centers in the Seattle MSA.[66]

30. Time Warner Telecom is a facilities-based CLEC that owns over 24,000 miles of fiber serving 30 states, including the Seattle MSA in Washington.[67] Time Warner Telecom focuses on the small and enterprise business markets, and offers a wide range of

[63] http://www.level3.com/press/7625.html. See Exhibit 3, Page 22.

[64] http://www.level3.com/press/7561.html. See Exhibit 3, Page 25.

[65] http://www.level3.com/wholesale/reach/index.html. See Exhibit 3, Page 27.

[66] Source: GeoTel, October 2006.

[67] http://www.twtelecom.com/about_us/networks.html. See Exhibit 3, Page 29.

telecommunications services including business voice service, dedicated high capacity services, digital trunks, ISDN, long distance, dedicated internet access, LAN services, etc.[68] Time Warner Telecom also provides wholesale services to other telecom carriers. For example, on June 1, 2005, Time Warner Telecom announced an agreement with the merged AT&T/SBC to provide, through 2010, "Special Access and other last mile network services to the companies nationwide."[69] Thus, AT&T/SBC can obtain Special Access services from a provider other than Qwest as AT&T/SBC seeks to expand its business presence in markets such as Seattle. Time Warner Telecom offers its business VoIP service, branded as TW Telecom One Solution, to small and medium business PBX customers via the Time Warner Telecom metro Ethernet system in various markets in the U.S., including Seattle.[70] In announcing results for the fourth quarter of 2006, Time Warner Telecom reported that it had grown enterprise business revenue by 43% year over year (including "organic growth" of 16%, with the remainder attributable to its acquisition of Xspedius Communications) and had grown data and Internet revenue by 40% year over year (including "organic growth" of 30%).[71] Time Warner Telecom also serves as a "carrier's carrier" in offering wholesale services, such as collocation, to other competitive telecom service providers in a number of markets, including Seattle.[72]

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[68] http://www.twtelecom.com/cust_solutions/sm_med_biz_sol.html. See Exhibit 3, Page 31.

[69] Time Warner Telecom press release: Time Warner Telecom, AT&T, SBC Extend Long-Term Service Agreement, June 1, 2005. See Exhibit 3, Page 32.

[70] Time Warner Telecom press release: Time Warner Telecom Launches VoIP-Based Business Solutions Over Metro Ethernet, February 23, 2005. See Exhibit 3, Page 35.

[71] http://www.twtelecom.com/Documents/Announcements/News/2007/TWTC_q4_06_.pdf. See Exhibit 3, Page 37.

[72] http://www.twtelecom.com/Documents/Resources/PDF/MarketingCollateral/3201CoLo.pdf. See Exhibit 3, Page 50.

31. Verizon closed its acquisition of MCI in January 2006, resulting in a combined telecom entity generating annual revenues of approximately $90 billion.[73] In the process, Verizon acquired MCI's operations and customer base in the Seattle MSA. MCI has offered a broad range of residential and small and enterprise business services in the Seattle MSA for a number of years. For example, MCI's Washington Price List No. 2 was revised during early 2006 to reflect Verizon's name, and show that Verizon Access Transmission Services continues to offer long distance, local exchange service, PBX trunk service, ISDN service, foreign exchange service, directory assistance, etc. to customers in the Seattle MSA.[74] The current MCI website also shows that Verizon continues to offer voice, IP, internet access, T-1 service, frame relay, hosting services, etc. to virtually every residential and business market segment.[75] Verizon also offers its VoiceWing VoIP product to multi-line business customers with access to a broadband internet connection, regardless of whether Verizon/MCI is the broadband connection provider.[76] Based on GeoTel data, Verizon/MCI had over [redacted] miles of fiber in the Qwest wire centers in the Seattle MSA as of October 2006 which can be used to bypass Qwest's local network.

32. XO Communications is a significant provider of retail business and wholesale telecommunications services in the Seattle market, and owns over [redacted] miles of

[73] http://newscenter.verizon.com/press-releases/verizon/2006/page.jsp?itemID=29672197. See Exhibit 3, Page 52.

[74] See Exhibit 3, Page 55.

[75] http://www.mci.com/. See Exhibit 3, Page 149.

[76] http://www22.verizon.com/Business/fyb/Broadband%20Services/VoiceWing/VoiceWing%20for%20Business/7365/7365_WA. See Exhibit 3, Page 150.

fiber in Qwest's wire centers in the Seattle MSA.[77] XO's Seattle fiber facilities are part of its 18,000 mile national fiber network, which reaches 75 major metropolitan markets in the U.S., including the Seattle MSA.[78] XO provides telecom services to enterprise business customers as well as wholesale services to other telecom carriers, and announced in October 2006 that it had aligned its businesses into two major segments--XO Business Services and XO Carrier Services--to reflect its focus on these specific market segments.[79] In addition, Nextlink, XO's wireless broadband service division, now offers a range of broadband wireless private line services, including DS3, OC-3 and OC-12 services to enterprise and wholesale customers in major markets in the U.S., including Seattle. These offerings compete directly with high capacity services offered by Qwest.[80] XO provides a wide range of local services for business customers, including basic voice business lines, business trunks, Centrex service, voice messaging, ISDN-PRI, directory assistance, foreign exchange service, long distance services, etc.[81] In addition to its traditional voice services, XO actively promotes its VoIP-based services provided via its XOptions Flex product line.[82]

33. AboveNetMFN (formerly known as Metromedia Fiber Network) is a fiber-based CLEC active in the Seattle MSA, and also self-reported in the latest FCC

[77] Source: GeoTel competitive fiber analysis, October 2006.

[78] http://telephonyonline.com/fttp/marketing/comptel_xo_wholesale_100906/. See Exhibit 3, Pages 151, 152.

[79] *Id.*

[80] http://www.nextlink.com/livefiles/ServiceGroups/1/Service_Providers.pdf. See Exhibit 3, Page 153.

[81] http://www.xo.com/products/smallgrowing/voice/index.html. See Exhibit 3, Page 155.

[82] http://www.xo.com/products/smallgrowing/integrated/. See Exhibit 3, Page 158.

Telecommunications Provider Locator as providing telecommunications services to enterprise business end users on a retail basis and other carriers on a wholesale basis.[83] In describing its operations, AboveNet states:

> "AboveNet, Inc. provides fiber connectivity solutions for businesses and carriers. Its private optical network delivers key network and IP services in and between 14 top U.S. metro markets and London. AboveNet's network is widely used in demanding markets such as financial services, media, health care, retail and government."[84]

According to GeoTel, AboveNet now owns over [redacted] miles of fiber in the Seattle MSA. At its current website, AboveNet provides a map of its extensive fiber ring in the Seattle MSA, which clearly intersects major business centers where high concentrations of businesses and carriers are located.[85] AboveNet currently offers a wide range of Metro Ethernet, Internet Protocol and Wide Area Network services via its fiber network, which bypasses Qwest network facilities in the Seattle MSA.[86]

34. It is important to note that in the Seattle MSA, these CLECs are focused squarely on reducing their reliance on Qwest UNEs as they deliver competitive local exchange service to their customers. The CLECs are realizing this goal by self-provisioning network facilities (either by wireline or wireless means), purchasing network capacity from other carriers (described later in this declaration), or by purchasing finished services, such as Qwest Platform Plus or Qwest Local Services Platform from Qwest via business-to-business contractual arrangements.

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[83] See Exhibit 3, page 159.

[84] http://www.above.net/about/. See Exhibit 3, page 160.

[85] http://www.above.net/products/maps2/maps/Seattle%20Entire%20Network.pdf. See Exhibit 3, page 161.

[86] http://www.above.net/products/ip-metroip.html. See Exhibit 3, page 162.

IV. SPECIAL ACCESS.

35. Special Access service can be utilized as a substitute for unbundled network elements. In fact, many landline-based competitors are purchasing Special Access services from Qwest today in order to serve customers in the Seattle MSA. As of December 2006, competitors purchased over [redacted] Voice Grade Equivalent ("VGE") lines in the Seattle MSA via Special Access.[87] Of these VGEs, [redacted] are based on DS1 Special Access, [redacted] are based on DS3 Special Access, and the remainder are based on OCn Special Access services. While Qwest does not have direct knowledge of the services CLECs provide to their customers via Special Access services, the fact that a significant proportion of Special Access services sold by Qwest to CLECs in the Seattle MSA are at a DS1 and above level suggests they are being utilized to serve enterprise customers who typically have the need for a large number of access lines and/or telecommunications bandwidth capacity. In fact, the number of VGE circuits being provided by competitors using Special Access services in the Seattle MSA exceeds the number of VGE circuits being provided by CLECs using unbundled network elements, Qwest Platform Plus and resale combined. In addition, revenues for Qwest Special Access provided to competitors in the Seattle MSA for the month of August, 2006 are over [redacted]. It is clear that carriers are

[87] VGEs represent equivalent voice channels; for example, a DS1 is equivalent to 24 voice channels, a DS3 is equivalent to 672 voice channels, an OC3 is equivalent to 2016 voice channels, and an OC12 is equivalent to 8064 voice channels. Special Access data is drawn from Qwest's wholesale tracking systems and reflects data vintage December 2006.

utilizing Special Access services very broadly in providing telecom services in the Seattle MSA.

36. It is also worth noting that, while Special Access is provided by Qwest throughout the Seattle MSA, there is also competitive fiber in most of these wire centers which can be used as an alternative to Qwest Special Access services, as discussed in the following section of our declaration. In fact, over [redacted] of the Special Access VGEs in the Seattle MSA are in wire centers that also have competitive fiber in place.

V. FIBER-BASED COMPETITORS.

37. A significant amount of fiber optic cable has been placed by competitive service providers in the Seattle MSA for use in bypassing Qwest's network. According to GeoTel,[88] approximately [redacted] miles of fiber (excluding fiber owned by Qwest and Qwest's affiliates) is in now place in the Seattle MSA, and is owned by approximately 20 unaffiliated providers.[89] Based on this 2006 GeoTel data, at least one fiber-based competitor is in [redacted] of Qwest's wire centers in the Seattle MSA, and

[88] "GeoTel Communications, Inc. is the leading provider of telecommunications infrastructure data in a geographic information system (GIS). GeoTel's unique business strategy implements and converges the mapping of telecommunications fiber and other telecommunications infrastructure with GIS technologies. These two items integrated into one digital data set gives leverage and insight into the competitive metropolitan fiber optic landscape across America." http://www.cmcstore.com/productcart/pc/viewCat_h.asp?idCategory=66.

[89] GeoTel continually works to update its data regarding fiber-based competitors and provides updated data approximately every six months. However, GeoTel does not possess complete data regarding each fiber-based competitor, and the data reported above is therefore likely understated. GeoTel data underlying the numbers above was provided to Qwest in October 2006.

these wire centers contain [redacted] of Qwest's retail residential lines and [redacted] of Qwest's retail business lines in the MSA. In addition, non-Qwest fiber is now being used to serve over [redacted] buildings in the Seattle MSA.[90]

38. According to GeoTel, some of the most significant alternative telecom fiber providers in the Seattle MSA include [redacted].[91] Confidential Exhibit 4 shows the known fiber routes in the Qwest wire centers of the 20 known entities with competitive fiber within the Seattle MSA. These fiber facilities can be used to directly bypass a number of Qwest mass market and enterprise services, such as local exchange service, private line service, ISDN, local area networks, frame relay service, long distance services, etc.

[90] Source: GeoTel, October 2006.

[91] *Id.*

VI. WIRELESS SERVICE COMPETITION.

39. Wireless phones are now widely accepted by business and residential customers alike for voice telephony. In addition, wireless providers are now augmenting their services with data applications such as dial-up wireless Internet access, text messaging and image transmission to bring additional functionality to their services and to attract new customers. The customer shift toward wireless substitution in Washington can be seen by reviewing the FCC's most recent Local Telephone Competition Report.[92] From December 2000 to June 2006, the FCC's data shows that Incumbent telephone company access lines in Washington decreased from 3.8 million to 3.0 million -- a reduction of 800,000.[93] As of June 2006, the FCC shows approximately 506,000 CLEC access lines in the state.[94] On a net basis (Incumbent and CLEC lines combined), there were 3.5 million wireline access lines in Washington as of June 2006. In contrast, wireless subscriber counts in Washington grew from 2.1 million to 4.4 million between December 2000 and June 2006, an increase of 2.3 million, or 110%, and wireless subscribers in Washington now well exceed the combined total of ILEC and CLEC wireline access lines in the state.[95] Clearly, wireless services are outpacing traditional wireline services in fulfilling many Washingtonians' telecommunications needs.

[92] *Local Telephone Competition: Status as of June 30, 2006*, Industry Analysis and Technology Division, Wireline Competition Bureau, January 2007.

[93] *Id.*, Table 10.

[94] *Id.*, Table 9.

[95] *Id.*, Table 14.

40. In its most recent Commercial Mobile Radio Service ("CMRS") competition report,[96] the FCC provides facts with regard to the percentage of households that have "cut the cord" (those that have disconnected wireline telephone service and now rely exclusively on wireless service for their voice telecommunications needs). The FCC states:

> Wireless substitution has grown significantly in recent years. According to a 2005 National Health Interview Survey (NHIS), 7.8 percent of adults lived in households with only wireless phones in the second half of 2005, up from 5.5 percent in the first half of 2004 and 3.5 percent in the first half of 2003.[97]

The FCC's data clearly shows a significant upward trend in the proportion of wireless subscribers who have "cut the cord," and there is no sign that this trend is abating, but rather, it is continuing its inexorable upward pace--driving by the omnipresence, increasing functionality and affordable prices of wireless telephones. In fact, the National Center for Health Statistics—the research source for the data relied upon by the FCC regarding wireless substitution—recently released an updated report showing that the proportion of households that have "cut the cord" has increased to 9.6% as of June 2006, continuing the steady upward trend observed since 2003.[98] However, this data only tells part of the story. In many instances, subscribers remove a second landline in favor of wireless service and/or shift a significant amount of telephone usage to wireless service. In each of these instances, demand for Qwest wireline telephone service is

[96] Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Tenth Report, September 29, 2006.

[97] *Id.*, Page 89, ¶205.

[98] http://www.cdc.gov/nchs/products/pubs/pubd/hestats/wireless2006/wireless2006.htm. See Exhibit 5, Page 1.